

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

JOANNE HARRIS and JESSICA DUFF, and
CHRISTY BERGHOFF and VICTORIA KIDD,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

ROBERT F. MCDONNELL, in his official
capacity as Governor of Virginia; JANET M.
RAINEY, in her official capacity as State Registrar
of Vital Records; THOMAS E. ROBERTS, in his
official capacity as Staunton Circuit Court Clerk,

Defendants.

No. 5:13-cv-00077

MOTION FOR LEAVE TO FILE BRIEF IN EXCESS OF TWENTY-FIVE PAGES

Pursuant to the Court's September 17, 2013 Scheduling Order, the plaintiffs, by counsel, respectfully request that they be permitted to file a brief in excess of twenty-five pages in support of their Motion for Summary Judgment. A proposed order is attached as Exhibit A, and the proposed brief, which is fifty-nine pages long, is attached as Exhibit B.

The basis for this motion is that this case involves a complex and rapidly evolving area of the law and multiple legal theories. The plaintiffs argue that Virginia's refusal to allow couples of the same sex to marry, and its refusal to recognize the lawful marriages of same-sex couples living in Virginia who married in another state (together, the "marriage bans"), violate both the

Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment. (Compl. at 31-37.) Each of these claims is multifaceted and requires extensive argument.

With respect to the Equal Protection Clause claim, the plaintiffs must first establish the appropriate standard of review. Plaintiffs make three separate arguments for heightened scrutiny: that heightened scrutiny applies to discrimination based on sexual orientation, that heightened scrutiny applies to discrimination based on sex, and that heightened scrutiny applies to discrimination with respect to the exercise of fundamental rights and liberty interests. Plaintiffs then argue that Virginia's marriage bans are unconstitutional even under a rational basis standard of review. This argument requires the plaintiffs to set forth the reasons for marriage bans typically advanced by states, and explain why each one fails as a rational justification for the laws. Plaintiffs also present a separate argument that the marriage bans violate the Equal Protection Clause by denying them access to the political process.

To establish that the marriage bans violate the Due Process Clause, plaintiffs first define the fundamental right at stake and explain that the existence of the right does not depend upon the identity of those seeking to assert it. Plaintiffs then explain how the marriage bans infringe on the fundamental rights of both the married plaintiffs and the unmarried plaintiffs.

Although plaintiffs have made every effort to be concise, they simply cannot make these complex legal arguments in twenty-five pages. A longer brief will not prejudice the defendants, since the Court may grant them permission to file responsive briefs in excess of twenty-five pages.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that the Court permit them to file a brief in excess of twenty-five pages in support of their Motion for Summary Judgment.

Dated: September 30, 2013

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
OF VIRGINIA FOUNDATION, INC.

/s/

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CERTIFICATE OF SERVICE

I, Rebecca K. Glenberg, hereby certify that on September 30, 2013, the foregoing document was filed with the Clerk of Court using the CM/ECF system, which will automatically send a copy to the following:

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